

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 25706 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE K.M.MEHTA**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ? No

2 To be referred to the Reporter or not ? No

3 Whether their Lordships wish to see the fair copy
of the judgment ? No

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ? No

5 Whether it is to be circulated to the civil judge
? No

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DULABHAI KALABHAI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR GM AMIN for Petitioner.

MR VINAY S PANDYA, AGP for Respondent No. 1

MR HS MUNSHAW for Respondent No.2

MR DR BHATT for Respondent No.3

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA**Date : 24/1/2007****ORAL JUDGMENT**

1. Dulabhai Kalabhai, petitioner, has filed this petition under Article 227 of the Constitution of India, with a prayer that this Court may be pleased to quash and set aside the order dated 18.10.2006 passed by the learned 4th Additional Civil Judge, Senior Division, Amreli below Exhs.78 and 79 in Land Acquisition Reference Case No.11 of 1974 and further order that compromise arrived at between the parties be ordered to be recorded and the matter be disposed of in terms of the compromise. The petition was filed on 22.11.2006. This Court has passed the order on 11.12.2006.

2. Pursuant to the order of this Court dated 11.12.2006, I have heard Mr.Gopinath Amin, learned advocate for the petitioner, Mr.Vinay S.Pandya, learned AGP for the respondent No.1, Mr.H.S.Munshaw, learned advocate for the respondent No.2 and Mr.D.R.Bhatt, learned advocate for the respondent No.3.

2.1 With the consent of parties, Rule is issued. Mr.Vinay S.Pandya, learned AGP waives service of rule

on behalf of respondent No.1, Mr.H.S.Munshaw, learned advocate waives service of rule on behalf of respondent No.2 and Mr.D.R.Bhatt, learned advocate waives service of rule on behalf of respondent No.3. Hence, with the consent of parties the matter has been taken up for final disposal.

3. The facts giving rise to this petition are as under:-

3.1 In the aforesaid matter the State of Gujarat published a Notification under Section 4 of the Land Acquisition Act on 9.8.1990 stating therein the public purpose as Gas Based Power Project, GRB Pipavav. The public notice was issued on 21.9.1990. The objections were filed by the petitioners somewhere in October 1990. Thereafter the State Government issued a notification under Sec.6 of the Act on 16.9.1991 and it was published on 1.10.1991. The Government has therefore declared on 16.9.1991 the public purpose stated was the same but the instrumentality was changed i.e. instead of GEB, it was stated as Gujarat Power Corporation Limited.

3.2 Thereafter appropriate officer issued public notice dated 30.9.1993 declaring that the award shall be passed on 1.10.1993 at the office of the Deputy Collector, Rajula. Accordingly the award was passed on 1.10.1993.

3.2A Being aggrieved and dissatisfied with the same, the petitioners filed a petition before this Court being Special Civil Applications No.11115 to 11174 of 1993 before this Court. The matter reached hearing before this Court (Coram: A.P.Ravani & D.G.Karia, JJ.) on 11.1.1994. The Division Bench of this Court after considering the contention raised therein and also considered the judgment of Hon'ble Supreme Court in Aflatoon vs. Governor, Delhi reported in AIR 1974 SC 2077 and also Ramjas Foundation vs. Union of India reported in AIR 1993 SC 852 and in view of the said observations, the Division Bench held that it would not be proper to entertain the petition after such inordinate delay which has not been satisfactorily explained. Hence the petition rejected. The order of the High Court is

also taken on record.

3.2B Being aggrieved and dissatisfied with the said order, the petitioner filed SLP before the Hon'ble Apex Court and the Hon'ble Apex Court by its judgment and order dated 12.7.1994 pleased to reject the SLP in this behalf.

3.3 The Government of Gujarat was in desperate need of electricity. The Gujarat State Power Corporation has handed over this project to GSPC Pipava Power Company, which 100% Government of Gujarat owned company. Since the land was not required by the Gujarat Electricity Board, undertakings were given in the earlier proceedings before this Court.

3.4 Therefore, the original land owners were permitted to cultivate the land. The original farmers are cultivating the land. They are having possession of the land. The petitioner and other claimants having agreed to compensation package made a reference was filed under Section 18 of the Land

Acquisition Act, before the District Court, Amreli. Under distribution of cases, the learned 4th Additional Sessions Judge, Senior Division, Amreli was allowed to hear the cases including the case of the petitioner herein.

3.5 Originally, respondent No.2 was made party. Since the said company was totally taken over by respondent No.3, and respondent No.3 has to only pay compensation, an application was made for impleading party respondent No.3.

3.6 After much deliberations between the parties a compromise purshis was prepared. Respondent No.3 was desperately in need of immediate possession of the land and wanted to get rid of compensation and delay of the proceedings and appeals etc., therefore respondent No.3 in the meeting of the Board of Directors and the Government had decided to pay market price to the claimants.

3.7 When compromise purshis duly approved and admitted by the parties was presented on 18.10.2006

before the learned Judge, the learned Judge instead of recording the compromise, had issued notice to the Legal Department vide order (Annexure "B"). No reasons are assigned warranting issuance of such notice contrary to Order 23 Rule 3 of the Code of Civil Procedure.

4. Mr.Gopinath Amin, learned advocate for the petitioner has assailed the aforesaid order on several grounds.

5. As regards respondent No.1-State of Gujarat, Mr.Vinay Pandya, learned AGP has produced a letter dated 21.12.2006 addressed by Assistant Collector, Rajula to learned AGP, in which it has been stated that, as per the Government instructions, whatever compromise entered into between the parties in Land Reference Case No.11/94, and if compensation is paid to the claimants, the respondent No.1-Assistant Collector has no objection. The said letter is taken on record.

6. On behalf of respondent No.2 - Gujarat State Power Corporation Limited, Mr.H.S.Munshaw, learned advocate appears. He has filed affidavit of one Shri Nayan Shantilal Chokshi, Company Secretary, Gujarat Power Corporation Ltd., dated 20.12.2006. In paras 1, 2, 3 & 4 it has been stated like this:

6.1 The respondent No.2 submitted that it has decided to enter into a Joint Venture Company with Gujarat State Petroleum Corporation Limited. It is submitted that Gujarat State Petroleum Corporation Pipavav Power Company Limited is formed as Joint Venture Company by Gujarat Power Corporation Limited and Gujarat State Petroleum Corporation Limited for implementation of a power project to be established at Village Kovaya, Taluka Rajula, District Amreli. It is stated that the project is for generating 700 MW power.

6.2 Respondent No.2 submits that the project is to be established on the land of Village Kovaya by way of acquiring land of various Survey Numbers of the said Village. It is submitted that a huge piece

of land ad-measuring 114 hectares is acquired by the present respondent No.2 through the Deputy Collector, Rajula, District Amreli by way of following the provisions laid down under the Land Acquisition Act.

6.3 The respondent No.2 further submits that the Land Acquisition Officer and the Deputy Collector at Rajula has declared an award on 1.10.1993 under the provisions of Section 11 of the Act and awarded approximately an amount of Rs.29,14,000/-. It is pertinent to note that the amount awarded by the Deputy Collector, Rajula is deposited by the respondent No.2 as it is a acquiring body.

6.4 The respondent No.2 further submits that thereafter the original land owners have approached the District Court at Amreli by way of filing various Land References for the enhancement of the compensation. It is submitted that the claimants have claimed Rs.30/- per sq. meter for Jirayat land (non-irrigated land) and Rs.40/- per sq.meter for Bagayat land (irrigated land) on the ground that the award of the respondent No.1 is a lower side and

contrary to the facts and evidences on record.

6.5 The respondent No.2 further submits that, pending the references before the District Court at Amreli, it appears that the claimants have entered into some compromise/settlement with the respondent No.3 Company for enhanced rate of compensation and placed purshis before this Court for the appropriate order and a copy of the said purshis dated 18.10.2006 is annexed as Annexure-A to the memo of petition.

6.6 It is submitted that the Court has passed the order on 18.10.2006 directing the respondent No.1 as well as the respondent No.2 to consider the same. It is further submitted that this Court has adjourned the matter for further hearing with the respondent No.1 and 2 herein as they are directly concerned with the proceedings. The respondent No.2 submits that it is an acquiring body and the amount of compensation is already deposited by it with the respondent No.1. It is further submitted that usually the land acquiring authority has to bear the amount of enhanced compensation and it is a necessary

party before all the forums in the litigation. It is further submitted that the State of Gujarat through its Energy & Petrochemicals Department has decided that the respondent No.2 will have 17% shareholding in the newly constituted respondent No.3 company. In other words, the respondent No.2 will have its shareholding in the respondent No.3 company and therefore on that ground also the respondent No.2 is a necessary party.

6.7 It is submitted that as on today the respondent No.2 is not only an acquiring body but also the owner and in possession of the land and has made the payment of compensation also and therefore the lower court has seems to order to hear the respondent No.2 as well as the respondent No.1 i.e. State Government before passing the appropriate order though the compromise purshis signed by the claimants and the respondent No.3 is moved for appropriate orders.

6.8 In view of this it is clear that the respondent No.2 is an interested and affected party

and therefore it is to be heard by the lower court before passing the appropriate orders. It is submitted that, in view of this factual background the respondent No.2 cannot be deleted as party respondent in the pending proceedings before the lower court though additional payment towards compensation is to be paid by the respondent No.3 company.

7. In view of the same, it has been stated that respondent No.2 may not be deleted in this behalf. The said affidavit is taken on record.

8. On behalf of respondent No.3 Gujarat State Power Corporation Pipava Power Company Limited, Mr.D.R.Bhatt, learned advocate appeared. He submitted that the Government of Gujarat was in desperate need of electricity and therefore oral agreement was arrived at subject to certain terms and conditions. He further submitted that the Gujarat State Power Corporation has handed over this project to GSPC Pipava Power Company – respondent No.3 herein which 100% Government of Gujarat owned company. Since the

land was not required by the Gujarat Electricity Board, undertakings were given in the earlier proceedings before this Court. Therefore, the original land owners were permitted to cultivate the land. The original farmers are cultivating the land and they are having possession of the land. The petitioner and other claimants having agreed to compensation package made a reference under Section 18 of the Land Acquisition Act before the District Court, Amreli. He has submitted that under distribution of cases, the learned 4th Addl. Sessions Judge (S.D.), Amreli was allowed to hear the cases including the case of the petitioner herein.

8.1 Originally respondent No.2 was made party. Since the said company was totally taken over by respondent No.3, and respondent No.3 has to only pay compensation, an application was made for impleading party respondent.

8.2 He has further submitted that after much deliberations between the parties a compromise purshis prepared in this behalf. Respondent No.3 was

desperately in need of immediate possession of the land and wanted to get rid of compensation and delay of the proceedings and appeals etc., therefore respondent No.3 in the meeting of the Board of Directors and the Government had decided to pay market price to the claimants.

8.3 He has, therefore, submitted that on 18.10.2006 when compromise purshis duly approved and admitted by the parties was presented before the learned Judge with a request that the learned Judge may pass the order accordingly in this behalf. However, as indicated above, the learned Judge has issued notice to the Legal Department by his order dated 18.10.2006 and also stated that the compromise purshis may also be send to respondent No.2 and thereafter after hearing the parties the Court will pass further orders. He has further submitted that no reasons are assigned justifying the issuance of such notice and therefore the said notice is contrary to Order 23 Rule 3 of the CPC.

9. I have considered the facts and circumstances

of the case. I have also considered the award passed by the Land Acquisition Officer earlier and the order of the Division Bench as well as order of the Hon'ble Supreme Court and therefore the matter is concluded and the same cannot be once again agitated in this behalf.

10. I have considered the facts and circumstances of the case. In view of this peculiar facts and circumstances of the case, in my view, once a compromise have been arrived at between the parties and when respondent No.3 is keen to acquire the land and desires to pay the compensation as per the wishes of the claimants, there is no need to further delay the matter and, therefore, the order of the learned Judge issuing notice was not legal and justified in this behalf and therefore the order of the learned Judge issuing notice is quashed and set aside.

11. In view of the same, the order dated 18.10.2006 passed by the learned 4th Additional Civil Judge, Senior Division, Amreli below Exhs.78 and 79 in Land Acquisition Reference Case No.11 of 1974 is quashed

and set aside. The learned trial Judge is requested to record the compromise as per the order dated 18.10.2006 and after recording the same, pass the necessary orders in this behalf. In view of this facts and circumstances of the case, there is no need to delete respondent No.2 in this behalf. In view of the facts and circumstances of the case, this Court requests the learned trial Judge to see that, in such nature of proceedings, in stead of prolonging the matter, the learned Judge ought to have pass the order so that valuable time, energy and money of the parties as well as claimants are saved.

12. This order has been passed in only one matter. This Court has been informed by the learned advocates for the parties that there are group of matters pertaining to this land for similar power project. If those matters comes the learned Judge will follow this judgment and pass the appropriate orders in this behalf.

13. With the aforesaid observations and directions, the petition stands disposed of. Rule is discharged

with no order as to costs.

(K.M. MEHTA, J)

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